

## ROBERT ALAN DAHL, ESQ.

1156 FIFTEENTH STREET, N.W., SUITE 550  
WASHINGTON, D.C. 20005  
TEL 202/466-8051  
FAX 202/828-5625

October 20, 1993

Chairman Scott E. Thomas  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

*Late Comment*  
*AOR 1993-17*

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FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

Dear Chairman Thomas:

I submit this comment to express my disagreement with Agenda Document #93-84-A relating to Advisory Opinion Request 1993-17.

In my view, the draft advisory opinion submitted by the Office of General Counsel correctly describes the extent of a federal interest in expenditures allocable between state and federal political activity and, thus, the reach of federal regulatory preemption. The draft properly concludes the state's assertion of its regulatory jurisdiction over political activity, while clearly and intentionally to the limit of state authority, does not encroach upon federal allocation requirements. The Massachusetts law does not disturb the obligation of committees engaged in combined federal and state activity to allocate no less than an appropriate, if minimal, share to the federal account, pursuant to the Commission's regulations.

The alternative proposal's reliance upon a federal interest in "flexibility" is misplaced. In drawing up its allocation regulations, the Commission's decision to afford committees some flexibility in paying allocable expenses, by permitting full payment from federal funds, was a valid interpretation of federal law and good administrative policy, but only that. It is, and can be no more than, a conclusion that such payment from the federal account would not conflict with allocation requirements or any other provision of federal regulation. As to the non-federal share, however, it necessarily implies 'if permitted by state or local law as well.'

Allocable activity is, by definition, not exclusively federal; the Commission perhaps could have chosen to view combined activity as wholly federal, but did not. Where separate state and federal jurisdictions are recognized to exist, but overlap, the Commission's adoption of requirements for payment of the federal share cannot mean federal law "occupies the field" as to expenses that the Commission acknowledges may be viewed as non-federal. Reporting requirements for the non-federal share of allocable activity are a specific assertion by the Commission of a federal interest in full disclosure and accountability of combined activity. No comparable federal interest is present with respect to funds used for non-federal purposes.

Respectfully,



Robert Alan Dahl